

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

IN RE: SANTA FE NATURAL TOBACCO
COMPANY MARKETING & SALES PRACTICES
AND PRODUCTS LIABILITY LITIGATION

LEAD CASE NO. MD 16-2695
JB/LF

This Document Relates to All Cases,

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs respectfully submit *MacDougall v. American Honda Motor Co., Inc.*, Case: 20-56060 (9th Cir. Dec. 21, 2021) (Exhibit A), as supplemental authority in support of their Motion for Class Certification. (ECF No. 278.)

In *Honda*, the Ninth Circuit reversed the district court's exclusion of the class-plaintiffs' damages expert who proffered a damages methodology utilizing a conjoint survey analysis in support of class certification. The Ninth Circuit found the trial court abused its discretion when it accepted Honda's argument that use of conjoint analysis fails as a measure of economic damages. The Ninth Circuit further held that Honda's challenges to the conjoint analysis regarding market considerations and specific product attributes go to the weight and not admissibility of the expert's opinion.

Defendants here made substantially similar arguments against Dr. Dubé as Honda made: that the economist's conjoint analysis did not properly measure supply-side factors and had other methodological flaws. *See MacDougal v. American Honda Motor Co. Inc.*, 2020 WL 5583534 (C.D. Cal. Sept. 11, 2020). Just as the Ninth Circuit concluded such arguments go to the *weight* and not admissibility of the expert's opinion in *Honda*, those arguments should not be any basis to exclude Dr. Dubé's opinions here. Furthermore, *Honda* demonstrates that utilizing conjoint analysis is appropriate for measuring class-wide damages.

Numerous courts have likewise approved of the conjoint analysis to measure class-wide damages in consumer class actions, as Dr. Dubé proffered here. *See* Plaintiffs' proposed findings of fact and conclusions of law at page 105 (ECF No. 361), citing authorities.

December 22, 2021

Respectfully submitted,

By /s/Scott P. Schlesinger

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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2021, I served a copy of the foregoing on the Clerk of Court by CM/ECF, which will provide automatic notification to all parties and counsel of record.

By: /s/ Jeffrey L. Haberman
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